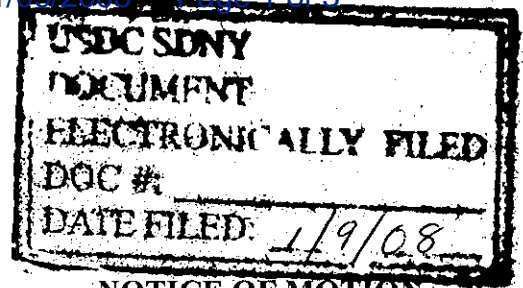


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
EDDIE COTTO,

NOTICE OF MOTION

Plaintiff,

07 CV 7656 (LTS) (AJP)

-against-

DETECTIVE PABON, DETECTIVE RAMOS,
DETECTIVE JOHN DOE #1, SHIELD #1133,
SERGEANT HARRINGTON, AND THE CITY OF NEW
YORK,

Defendants.
-----X

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MEMO ENDORSED p2

PLEASE TAKE NOTICE that, upon the annexed Declaration of Sarah Evans, dated December 28, 2007, the accompanying Memorandum of Law dated December 28, 2007, and all the papers and proceedings had herein, defendant the City of New York will move this Court, before the Honorable Laura T. Swain, at the Daniel Patrick Moynihan United States Courthouse, located at 500 Pearl Street, Room 755, New York, New York, 10007, on a date to be determined by the Court, for an Order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing plaintiff's Amended Complaint, with prejudice, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Individual Practices of District Judge Laura T. Swain, by letter dated December 17, 2007, this Office wrote to plaintiff in an attempt to resolve informally the matters raised in City defendant's motion to dismiss. We requested that plaintiff review the relevant case law, and advise this Office on or before December 24, 2007, in writing whether he would voluntarily withdraw any or all of the claims raised in the amended complaint so as to narrow the claims and/or issues presented for

decision by the Court. By letter dated December 21, 2007, plaintiff advised defense counsel that he would not withdraw any of the claims and/or issues raised in his amended complaint. Defendant City respectfully submits and certifies that we have used our best efforts to comply with the Paragraph 2.B. of the Court's Individual Practices, and that we are unable to narrow the issues presented for decision by the Court.

PLEASE TAKE FURTHER NOTICE that pursuant to the Individual Practices of District Judge Laura T. Swain, plaintiff's opposition papers, if any, shall be served ten business days after receipt of the moving papers.

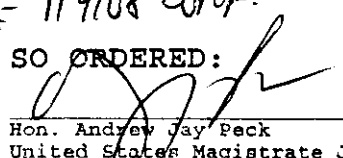
PLEASE TAKE FURTHER NOTICE that reply papers, if any, shall be served five business days later.

Dated: New York, New York
December 28, 2007

MEMO ENDORSED

THE MOTION IS DENIED, w/o
PREJUDICE TO REFILE AFTER
PLAINTIFF FILES HIS AMENDED
COMPLAINT - AS THE COURT
DIRECTED AT THE 11/4/08 CONF.

SO ORDERED:


Hon. Andrew Jay Peck
United States Magistrate Judge

To: Eddie Cotto (By mail)
Plaintiff Pro Se
DIN # 06-R-5209
Mohawk Correctional Facility
6100 School Road
PO Box 8451
Rome, New York 13442-8451

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendant City of New York
100 Church Street, Room 3-151
New York, New York 10007
(212) 788-1041

By:



Sarah B. Evans
Assistant Corporation Counsel
Special Federal Litigation Division

cm. E. Cotto / mail
Ms Evans / fax
John Swain

BY FAX.

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: January 9, 2008

Total Number of Pages: 3

TO	FAX NUMBER
Sarah B. Evans, Esq.	212-788-9776

TRANSCRIPTION:

MEMO ENDORSED 1/9/08

The motion is **DENIED**, w/o prejudice to renewal after plaintiff files his amended complaint – as the Court directed at the 1/4/08 conf.

**Copies to: Eddie Cotto (Mail)
Judge Laura Taylor Swain**